IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

WRIT PETITION NO.4885 OF 1988
WITH
WRIT PETITION NO.5135 OF 1988

N.S.Birdi and another — Petitioners

versus

Ramchandra Mhaskar Vede
and others — Respondents

N.S.Birdi and another — Petitioners

versus

Baban Maruti Vede
and another — Respondents

Mrs.Anita A. Agarwal, adv. for petitioners in both petitions.

Mr.A.H.Patekar, AGP for respondent no.6.

Mrs.Aniketa Sawant, adv. for respondents.

CORAM : A.M.KHANWILKAR, J.
DATE : 30th August 2004

PC :

1. Both these petitions can be disposed of by a common judgement.

2. The petitioners purchased the suit land from respondent owner for consideration. As prior

permission for effecting that sale was not obtained, an inquiry u/s 84(c) of the Bombay Tenancy & Agricultural Lands Act was initiated. The Tenancy Awal Karkun issued notice to all the concerned and proceeded with the inquiry. After inquiry it found that the said transaction effected in favour of petitioners was invalid and issued declaration in that behalf by decision dated 26th December 1986. The said decision was carried in appeal at the instance of petitioners. Even the appeal has been rejected by impugned judgement dated 22nd July 1988 passed by Sub Divisional Officer, Haveli, Sub Division Pune. These concurrent decisions are subject matter of these petitions which pertain to land bearing different survey numbers between the same parties.

3. The only grievance made before this Court at the instance of petitioners was that the petitioners were not duly served with the notice by the Tenancy Authorities and as such inquiry was vitiated. It was contended that the authorities proceeded on the assumption that petitioners have been duly served, as the notices regarding inquiry were displayed on the suit land. Learned counsel for petitioners contended

that as the petitioners were available for service, there was no reason for displaying the notices regarding inquiry on the suit land and that mode of service has denied the petitioners an opportunity to contest the proceedings.

4. On the other hand, learned counsel for respondents submits that two authorities below have concurrently found, as of fact, that notices were duly served on the petitioners. For that reason it is not open for this Court to take a different view of the matter or accept grievance now made before this Court, that the petitioners were not served. Learned counsel for the respondents in addition has placed reliance on the original record of the case which is made available before this Court, which clearly indicates that the notice sent to the petitioners by Registered Post Acknowledgement Due (RPAD) was duly served, inasmuch as, the petitioners thereafter asked for time to file reply, but did not submit any written reply for which the authorities proceed with the inquiry and it has been so recorded in the impugned orders.

5. Having considered the rival submissions and after perusing the record, I see no reason to

interfere with the concurrent view taken by two authorities below. Record clearly supports stand taken by respondents that notices regarding inquiry were duly served upon the petitioners sent through RPAD.. If this be the position, there is no substance in the grievance that the manner of service of notice on the suit land was not sufficient. Authorities below have in fact observed that the notices were displayed at the suit lands were additional notices, which is stated to be last in point of time. But even after issuance of that notice, the petitioners did not appear in inquiry nor filed any reply. It is, therefore, too late now to complain that the petitioners were not duly served with the notice of inquiry. It is obvious that the petitioners have only gained time as they have no plausible defence to offer. Inasmuch as, the sale deed executed in favour of petitioners is obviously without seeking prior permission of the concerned authority, which necessitated an action u/s 84(c) of the Act. Accordingly, both these petitions would fail. Both petitions are dismissed. No order as to costs.

(A.M.KHANWILKAR, J.)